

CMT Engineering Laboratories Appeal Hearing – April 24, 2014 Meeting Minutes (Draft)

Attendees:

Alan Bachman
Don Kattelman
Lois Wiesemann
Mark H. Anderson
Bryan Hemsley
Ryan Lindstrom
Jeremey Raymond
Jonathan Rupp
Scott Rigby
Chiarina Bautista
Renee Stacy

Mark Anderson, Chair of the Panel, called the meeting to order.

Mr. Jonathan Rupp, attorney for CMT: The email exchange is on the record. The emails were given to the court reporter. Mr. Rupp believes that Scott Rigby knew he was given a protest from the emails. Scott Rigby was the appropriate person to receive the protest and he treated it as a protest. The February 18, 2014 email that was sent to Alan Bachman states the process to find the protest hearing officer. The Procurement Code defines head of a procurement unit.

Mr. Rupp: the protest officer is defined in the Procurement Code. Scott Rigby qualifies as a designee procurement officer. The appeal bond was directed to Mr. Rigby and he was the point of contact for this entire process and the party to whom CMT has been instructed to submit their protest to. The panel should not disqualify this protest on grounds of Scott Rigby.

Mr. Rupp: The January 30, 2014 email is the protest document.

Mark Anderson: Does not believe that the email meets the requirements of being a protest. He read the following words from the January 30th email that states, “The following are items of concern we would like you to address to the selection Committee members.” The protest does not go back to the selection Committee members; that is not how a protest is handled. It appears CMT wants the Committee to look at their points and adjust the points that were awarded, and they want them to reevaluate their scores, which is how Mark is interpreting it.

Mr. Rupp: It meets the liberal requirements as it pertains to what constitutes a protest, in Section 1602 of the Procurement Code. CMT identifies the areas that they believe the proposals were misevaluated and specifically asked for a corrective action of the procurement unit.

Jeremy Raymond: stated that Bart Baird is the point of contact of the Cache County School Board and will email Alan Bachman his contact information. Cache County School District will ask for reimbursement for their legal expenses regarding this protest.

Jeremy Raymond: The proper protest officer is very clear and that should have been delivered to the Board and by requesting Scott Rigby to give it to the selection committee that never gave Cache County School Board the opportunity to address this and consider this and do a appropriate protest proceeding. We want to be reimbursed for the cost in defending this appeal.

Alan Bachman: Read section 1904 of the Procurement Code discussed these reimbursement requirements. The panel cannot address that issue and it does not have to be included in the decision issued by the panel. Mr. Rupp believes it is under the panel's discretion.

Ryan Lindstrom: Was there a response stating that the protest was received by CMT and instructions on the process moving forward that is required by statute?

Mr. Rupp: No acknowledgement of protest, the only response was in the email string from Scott Rigby to CMT. There was no separate response.

| Deliberations – Panel went into a closed session upon a motion made by Mark Anderson and an anonymous approval.

Ryan Lindstrom made a motion that the panel go into open session. Bryan Hemsley seconded the motion. The motion passed unanimously.

Back to open session

Three issues before the panel:

- (1) Sufficiency of the January 30, 2014 email as a valid protest,
- (2) was the clearly erroneous, arbitrary and capricious standard met,
- (3) was the appeal frivolous or in bad faith or with the intent to hinder or delay.

1. Mark Anderson does not believe the email is a valid protest document. It fails to include a mailing address, and it seems the email's intent was a follow-up with questions. He does not believe the email was intended as a protest. It was an attempt to turn it into a protest, but the seven days had lapsed at that time.

2. Arbitrary and Capricious standard not met - the experience by the subcontractors, and the personnel. It can be read more than one way. It would satisfy and does satisfy the requirements. Sunrise Personnel – you cannot say they fail to satisfy that requirement. The experience seems to be there.

3. Mark Anderson does not believe the appeal was frivolous or in bad faith or to hinder on delay and he is not in favor of forfeiting the bond.

MOTIONS

- (1) Motion made by Mark Anderson that the January 30th, 2014 email from Charlie Trujillo to Scott Rigby does not constitute or qualify as a procurement protest. Motion seconded by Ryan Lindstrom. Motion passed unanimously.
- (2) Motion made by Mark Anderson that even if the protest was properly before the panel, that it fails to meet the arbitrary and capricious or clearly erroneous standard. Motion seconded by Bryan Hemsley. Motion passed unanimously.
- (3) Motion made by Mark Anderson that the appeal to this body is not frivolous or in bad faith or brought with the intent to hinder or delay. Motion seconded by Bryan Hemsley. Motion passed unanimously.
- (4) Motion made by Mark Anderson that Alan Bachman be directed to draft a decision or opinion to be considered by the panel and be distributed to the panel informally for their review. Once it is in final form, it be signed by the Chair and issued within seven days. And the issuance of that decision will be what will trigger the appeal period to take it up to the Court of Appeals. It is not this meeting, it is not these motions, it is the decision we will be issuing next week, no later than Thursday of next week.

Alan Bachman clarified that he send the order to the Chair first, and the Chair will possibly suggest some changes, and when he considers it ready for the panel, then it will be distributed to the panel.

Alan Bachman also clarified based on findings and decision, the decision on motion #1, that the decision was based on whether a reasonable protest officer would have considered this a valid protest. Mark Anderson said yes.

Meeting adjourned.